

FILED

May 5, 2003

**NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS**

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS

In the Matter of:

KENNETH ZAHL
License No. MA56413

ORDER

WHEREAS the State Board of Medical Examiners entered a Final Order' on April 3, 2003, which Order included a provision that the license of respondent Kenneth Zahl, M.D. to practice medicine and surgery in the State of New Jersey was to be revoked effective on April 11, 2003, and

WHEREAS the revocation ordered was stayed by Order of the Appellate Division of the Superior Court of New Jersey dated April 11, 2003, conditioned upon Dr. Zahl's "satisfaction of any and all reporting requirements imposed by the State Board of Medical Examiners (Board) and the payment of all costs associated with the Board's continuing supervision and oversight of the financial and billing activities of the appellant's medical practice", and

WHEREAS the Board finds that the imposition of the below set forth conditions and requirements are in the public interest and will effect the Order of the Appellate Division during the pendency of Dr. Zahl's appeal of this matter;

IT IS on this 5th day of May, 2003

ORDERED :

1. Establishment of Monitoring Team: A monitoring team shall be established to oversee the financial and billing activities of respondent's practice during the pendency of his appeal of the Board's Order of April 3, 2003. The monitoring team shall consist of two individuals, acceptable to the Board, which individuals shall be approved by the Board prior to commencing the monitoring functions required by this agreement. One member of the monitoring team shall be a New Jersey licensed health care professional who shall serve as a practice monitor (hereinafter the "Practice Monitor"). The Practice Monitor shall be experienced in and familiar with all procedures that Dr. Zahl performs in his medical practice.¹ The Practice Monitor may be a licensed physician or an individual holding a limited license (including, but not limited to, a Certified Registered Nurse Anesthetist), provided an adequate demonstration is made that the Practice Monitor has an appropriate background to be able to accurately record all medical services Dr. Zahl may perform.

¹ It is the understanding of the Board, based on prior submissions and representations made, that respondent presently engages in a practice limited to providing pain management care to patients. If that is the case, the Practice Monitor should be an individual experienced in the field of pain management. If Dr. Zahl's practice is broader in scope, the Practice Monitor should be experienced in all areas of Dr. Zahl's practice.

A second individual shall be designated to review any and all bills that Dr. Zahl may submit for payment for medical services he provides (hereinafter the "Billing Monitor"). The Billing Monitor shall be an individual experienced in and familiar with medical billings and CPT coding, with particularized knowledge of appropriate CPT codes for pain management diagnoses and treatment.

Not later than seven days (five business days) from the date of entry of this Order, Dr. Zahl and the Attorney General shall individually or jointly propose individuals to serve as the Practice Monitor and as the Billing Monitor, and shall provide a curriculum vitae setting forth the experience of any proposed individuals for the Board's consideration. The Board shall consider any nominated individuals, and shall approve said nominated individuals provided a satisfactory demonstration is made that the individuals possess appropriate backgrounds to fulfill the functions of each monitoring position (see paragraphs 2 and 3 below). The Board shall not unreasonably withhold approval of appropriately qualified individuals. In the event both parties submit nominations of appropriately qualified individuals, the Board shall select those individuals to serve the monitoring positions that the Board shall, in its discretion, find to be most qualified. In the event no suitable individuals are nominated to serve as Practice Monitor or Billing Monitor by either party, the

Board shall independently select and appoint appropriately qualified individuals to serve.

2. Functions of Practice Monitor: The Practice Monitor shall accompany Dr. Zahl when he engages in medical practice, shall observe all medical practice of Dr. Zahl, and shall prepare a contemporaneous log recording any and all medical procedures and/or services that Dr. Zahl performs and/or provides. The Practice Monitor shall prepare a daily log detailing the medical procedures and/or services that Dr. Zahl provides to individual patients, and shall certify to the accuracy of said log. The Practice Monitor shall provide copies of the log of services performed by Dr. Zahl to the Billing Monitor on such schedule as may be deemed necessary to allow the Billing Monitor to perform his or her designated functions. The Practice Monitor shall provide the Board with quarterly reports, to include copies of all daily logs prepared by the Practice Monitor, detailing the monitoring activity performed, and noting any perceived improprieties, practice deviations or regulation violations observed.

3. Functions of Billing Monitor: The Billing Monitor shall review all bills that Dr. Zahl submits, on such schedule as the Billing Monitor shall, in his or her discretion, deem necessary but in no event less frequently than once every two weeks. The Billing Monitor shall then determine whether Dr. Zahl is accurately and appropriately billing and coding for medical services provided, and

shall rely upon the log entries prepared by the Practice Monitor (and not upon any information which may be independently provided by respondent) when making said determination. The Billing Monitor shall make an immediate report to the Board of any instances where he or she makes a determination that Dr. Zahl submitted an inappropriate, unsubstantiated, or inappropriately coded bill. The Billing Monitor shall also submit quarterly reports to the Board detailing the monitoring activity performed, and noting any perceived improprieties, practice deviations or regulation violations observed.

4. Billing by Dr. Zahl: Dr. Zahl may only submit bills for medical services he performs that have been observed by the Practice Monitor and recorded in the log of medical services prepared by the Practice Monitor. This Order shall not be deemed to preclude Dr. Zahl from engaging in medical practice at times when the Practice Monitor is not present, however Dr. Zahl shall not submit any bills for payment for any medical services he may perform and/or provide at such times.

5. Payment of Costs associated with Monitoring: Dr. Zahl is directed, consistent with the Appellate Division's order, to pay all fees and costs associated with the retention and employment of the Practice Monitor and the Billing Monitor. Said individuals shall be compensated at rates commensurate with the individual's ordinary and customary rates of compensation. Dr. Zahl shall

establish an escrow account for the purpose of securing the payment of all costs associated with the monitoring ordered herein, and shall deposit into said account an amount sufficient to cover all anticipated expenses of monitoring for a three month period. Dr. Zahl shall thereafter directly pay all invoices for services provided by the Practice Monitor and the Billing Monitor on not less than a monthly basis. In the event Dr. Zahl shall fail to timely pay invoices submitted by the Practice Monitor and/or the Billing Monitor, said failure shall be cause for the Board to enter an Order suspending respondent's license. In such event, monies deposited in the escrow account established to secure payment for monitoring services shall be used to pay invoices for services owing to the Practice Monitor and/or the Billing Monitor.

6. Confidentiality: The Practice Monitor and the Billing Monitor shall maintain confidentially any information they may acquire regarding individual patients in the necessary performance of their functions, and shall not make any disclosures of information concerning individual patients other than disclosures to the Board as may be necessary to comply with their functions.

7. Reservation of Rights to Amend Terms of Order: The Board expressly reserves the right to amend or alter any of the terms or conditions imposed herein, upon application made by either party and a showing of good cause for modification of the Order, or upon

the Board's own initiative should cause be found to exist to modify
the terms of this Order.

NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

By:

William V. Harrer M.D. B.L.D.

William V. Harrer, M.D., B.L.D.
Board President